

Florida Injunctions for Protection

The Hearing

Office of the State Courts Administrator, Office of Court Improvement

Court Staff: Good Morning. The judge asked that you be here a few minutes before your hearing, so that I can explain a little about what's going to happen today and answer questions. We know that this is probably a confusing and difficult time for you. We want to give you a general idea about what you can expect today. Remember that every case and courtroom is a little different. The purpose of most of the hearings today is to decide if a final injunction should be entered in your case or if the petition for an injunction should be denied. At this time, some of you may have a temporary injunction in effect, and others may have an order for a hearing only. A temporary injunction is an order that is in effect for a short period of time. An order for hearing only means that the judge reviewed the petition and there was not enough information for a temporary injunction, but there was enough for the court to schedule a hearing and to determine if an injunction should be issued. Some of you may also be here because you have already had a final hearing, and you or the other person asked the court to modify or change the order in some way, to drop or dismiss it, or to extend it and keep it in effect longer.

Court Staff: The People that you can expect to be there are the petitioner- the party who asked the court for an injunction and if a parent filed the petition on behalf of a minor child, the parent and child will be present; the respondent, the party the injunction or restraining order has been filed against because he or she allegedly committed or threatened violence; the judge who will decide what to do with the case; the bailiffs, to keep order in the court; the attorneys, if one of both parties have them; the court employees, who keep a record of the hearing and help the judge with paperwork; and an advocate may be with the petitioner, but that person will not participate in the hearing and is just there to support the petitioner. Other people may also be present and waiting for their hearings.

Respondent #1: Yeah, can we bring other people like friends or witnesses?

Court Staff: Either person in the case can call witnesses, but they are only part of the hearing when they are testifying. Witnesses are individuals who have seen or heard something firsthand or have information that has to do with the facts in the petition. Only those witnesses that the judge decides have relevant information are allowed to testify. The bailiff will call witnesses when they are needed.

Petitioner #1: What if the other person in my case is not here?

Court Staff: Well, it depends on which person it is. If the petitioner is not here, then the court may dismiss the case. If the respondent is not here then one of two things may

happen: if the person was served and knew about the hearing and decided not to come anyway, then the court can go forward with your case and enter a final injunction if determined necessary, OR if the other person was not served and did not know about the hearing, the court will not enter a final injunction today.

Respondent #2: Can we just talk to the other person in our case and try to work this out?

Court Staff: No, the court requests that you do not have contact before, during, or after your hearing, unless the court dismisses the case. You should NOT sit next to the other person in your case while waiting or communicate in any way with the other person. As long as there is an injunction in effect, you should have NO CONTACT with the other party. Speak to the judge or attorneys only during the hearing.

Court Staff: We will talk about the hearings where the court is deciding if a final injunction should be entered. If you have an attorney or attorneys are involved in the hearing, then the hearing will be pretty much the same except that the attorney(s) will ask questions and talk to the judge. If not, then both you and the other person will talk directly to the judge. I'm going to show you some examples of these hearings. The hearing will usually start by the judge asking the respondent if he or she agrees with a final injunction being entered in the case.

Judge: Do you agree with the issuance of a final injunction against you?

Respondent: That's fine with me, I don't agree with what she said, but I'll consent.

Judge: Do you understand that the means there will be a judgment against you, and that you'll have to abide by the restrictions that I place in the order, and that that might include counseling?

Respondent #3: You mean like that domestic violence stuff you? Sure.

Court Staff: If the respondent agrees with the final injunction the judge will resolve the details with the parties. The order would be signed, and the hearing would be over. Respondents should be sure that they have read the order and fully understand what it means before they agree to the injunction. If the respondent does not agree, then he or she will "contest" the order. In some courts they may have to give their reason for doing so. If the respondent says, "no" or contest the injunction, then the hearing will go forward.

Respondent: No, I do not agree with the final injunction.

Court Staff: Next the judge will usually ask if either side has witnesses. All parties will be sworn.

Judge: Ok, then we are ready to proceed. Will the petitioner please tell the court what has happened that has lead you to file a petition for an injunction?

Petitioner: Well, you honor, last week, what he told you earlier is not actually correct . .

Court Staff: The petitioner will need to tell the court about how he or she is a victim of violence or why he or she is in immediate fear of being a victim of violence for the court to issue an injunction. He or she can do so by telling the court about recent physical violence or threats of physical violence.

Petitioner: ... and on the way back across, hit me across the chin ...

Court Staff: After the petitioner says everything he or she needs to, then the petitioner may present any evidence such as pictures, phone records, or messages to support his or her petition. Then petitioners may ask the judge to call witnesses if he or she has any. Petitioners will ask questions of any of their witnesses first, and then respondents will be allowed to ask each witness questions. After the petitioner is finished, the respondent will have a chance to ask any questions about things that were said in the petition or presented to the court. At this time, the respondent can only ask QUESTIONS about the petitioner's testimony not make statements or talk to the petitioner. This is really harder to do than it sounds, especially when you are upset. If you have a hard time doing this, just be patient, and you will have a chance to tell your side of the story next. Now, the respondent can tell his or her side of the story.

Respondent: I was really, really upset because we were running so late.

Court Staff: But if you are a respondent with a criminal charge or case about this same incident or related incidents, keep in mind that you have the right not to say anything at all in this injunction hearing. You can agree to a final injunction being entered. If you were arrested, or if you have been notified that you have been charged with a crime, that case will be heard in criminal court. If you cannot afford an attorney, a public defender will be appointed to represent you in the criminal proceedings. But, this is a civil hearing about an injunction for protection only, and so a public defender will not be appointed to represent you in this hearing. The hearing today is completely separate from the criminal case. These hearings are recorded and the state attorney can get a copy of the recording. So if you do testify in this hearing, anything that you do say can and will be used against you in your criminal case. After the respondent says everything he or she needs to then the respondent may present any evidence such as pictures, phone records, or messages to discredit the petitioner's allegations against him or her. When he or she is done then the petitioner can ask the respondent QUESTIONS about what he or she said or presented but may not make statements or argue with the respondent. Then the respondent may ask the judge to call witnesses if he or she has any. The respondent will ask questions of any of their witnesses first, and then the

petitioner will be allowed to ask each witness questions. Then, the judge will make a decision about whether or not to issue an injunction based on whether or not the petitioner has provided sufficient evidence that he or she is a victim of violence or in imminent danger of becoming a victim. If the judge issues an injunction, then the judge may ask the people in the case more questions about what details need to be included in the order. Depending on the particular situation, the judge may include other terms in the injunction about possession of a home or residence, children, or property. There may also be a need for the judge to allow the respondent to return to a shared residence with a law enforcement officer to pick up personal items and/or work related items.

Respondent #3: Excuse me, excuse me, are you suggesting that the judge is gonna meet with us for like ten minutes and then tell me where my kid is gonna live and when I can see him? I mean, I haven't seen my kid in like, two weeks, and it's killing me.

Court Staff: Sir, Please sit down. I understand that this is upsetting, but whatever this court decides about children and property may not be permanent. Injunction hearings are not designed to resolve all issues with property and children permanently. Their purpose is to deter violence and threats of violence by ordering people to stay away from each other and to make temporary arrangements for children and property until the issues are resolved in another court. Also, if a final injunction is issued, the respondent may be ordered to attend a batterer intervention program, mental health evaluation and treatment, substance abuse evaluation, parenting class, or other court ordered program. If you are a respondent, you do not get information about where to go for these things, ask the court employees or the judge. Respondents MUST do what they are ordered to do, or they can be held in contempt of court. If an injunction was entered in your case, don't leave the courtroom until you get your copy of the paperwork and read it carefully. The injunction tells the respondent what he or she can and cannot do. It is not a two way order and does not give the petitioners any instructions. Make sure that you don't have any questions and that all of the things the judge said in your hearing are checked off in the injunction. If you have questions, ask the deputy clerk before you leave the court house. Petitioners should make extra copies of the order as soon as possible and **KEEP A COPY OF IT WITH THEM EVERYWHERE THEY GO**. Either party may go to the clerk's office to fill out a request to drop or stop the order at any time. The judge may set a hearing to make sure the petitioner is safe and/or that there is good reason to stop or dismiss the order. Both parties will receive notice of the hearing. The judge will make a decision about dismissal after the hearing. Or, if something happens and either person needs the court to change or modify the order, they can go to the clerk's office and fill out the paperwork to ask for a change. The court will deny the request or set a hearing and send the other person copies of the paperwork filed and court order scheduling a hearing. So it is important to let the clerk's office know if your address changes after today. If you do not and the other person attempts to make changes to this injunctions the court cannot notify you.

Respondent #2: When they brought this court order to my house, the officer made me give him my guns, when do I get those back?

Court Staff: If a final injunction is issued against you today in a domestic violence, dating violence, or sexual violence case, then you cannot have any weapons for as long as the injunction is in effect. That may also be ordered in a repeat violence case. When the order expires, or if it is dismissed, then you may contact law enforcement or the clerk's office to request to have your weapon returned to you. Violation of the firearms provision in an injunction is a separate crime. If convicted under state law for that crime, the respondent can be incarcerated for up to a year and fined up to \$1,000. If convicted, under federal law, the respondent can go to prison for up to ten years.

Petitioner #2: What if he doesn't do what the order says he has to do?

Court Staff: If the respondent violates the order you can go to the clerk's office and fill out the papers asking for the court to enforce the order. The judge will review the papers and enter appropriate orders or schedule appropriate hearings. If the respondent violates the injunction in some way that may constitute a crime, for example: calling, coming over to your home or other places in the order, sending flowers, following you, coming to your work, etc., then you should report it to law enforcement immediately. Call 911.

Respondent #1: Yeah, what happens if she calls me first?

Court Staff: Okay, let us say that petitioner calls the respondent up in a few weeks and says, "Hey forget about all of that court stuff, I love you, let's get back together, please come over so we can talk." The respondent should not go or have any contact with the petitioner. Once the court issues an order, only the court can take it away.

Respondent #3: What if I see her somewhere? Am I supposed to turn the other way and leave?

Court Staff: That depends. You must follow the terms of your specific injunction. If it tells you that you cannot be within a certain number of feet from the petitioner or that you must leave any place where the petitioner is present, then you must follow those directions. You can just politely turn and go the other way if you see him or her in public. Now, if you know the petitioner shops there on Tuesday at 5, and every week you go on that day, on time, on purpose, and keep "running into" the petitioner there, that could be a violation. If you are sitting in a restaurant eating and the petitioner comes in, you do not have to leave, but once again, you cannot have any contact verbal or physical with the petitioner. Again, you must follow the requirements of your particular injunction. Any other questions? Alright, thank you for your time. If you have specific questions about your case, court staff can answer them, but they cannot give

you legal advice, tell you what to say, or talk to the judge for you. Please stay seated and wait for your names to be called.